

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSH KLEIN, a California Resident;
and COVALENCE CAPITAL FUND I,
LP, a Delaware limited partnership,

Plaintiffs,

v.

DOUGLAS JAE WOO KIM, a New
York resident,

Defendant.

CASE NO. 2:20-cv-01628-BJR

**STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential

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LAW OFFICES
CALFO EAKES LLP
1301 SECOND AVENUE, SUITE 2800
SEATTLE, WASHINGTON 98101-3808
TEL (206) 407-2200 FAX (206) 407-2224

1 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
2 confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 As used in this Stipulated Protective Order, “Confidential” material means documents,
5 tangible things, and records produced or otherwise exchanged through discovery that any
6 designating party believes in good faith is entitled to confidential treatment under applicable law,
7 that should not be disclosed to non-parties and the public, generally, and includes, but is not limited
8 to, the following categories of information:

- 9 a) Cryptocurrency passwords, private keys, or private addresses; computer IP addresses; any
10 network, account, or other type of password intended to be used as a security measure;
11 b) Information related to Covalence’s individual investors, fund investment strategies, and
12 performance;
13 c) Information related to Defendant Douglas Kim’s trading or investment strategies, trades,
14 investors, and investment performance;
15 d) Personal information related to the parties’, or their agents’, personal finances including,
16 but not limited to, any assets and liabilities, employment, health, or medical information,
17 information concerning the parties’ reputation for and any acts bearing on the issue of
18 “truthfulness” outside of those acts which are alleged in this litigation, if any, any personal
19 information that is otherwise within the common law right of privacy.
20

21 3. SCOPE

22 The protections conferred by this agreement cover not only Confidential material (as
23 defined above), but also (1) any information copied or extracted from confidential material; (2) all
24 copies, excerpts, summaries, or compilations of confidential material; (3) documents or materials
25

1 that contain confidential information, including without limitation, discovery responses; and (4)
 2 any testimony, conversations, or presentations by parties or their counsel that might reveal
 3 confidential material.

4 However, the protections conferred by this agreement do not cover information that is in
 5 the public domain or becomes part of the public domain through trial or otherwise.

6 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

7 4.1 Basic Principles. Subject to Section 5, below, a designating party (or the producing
 8 party) shall have the right to designate as “Confidential” any materials, including documents,
 9 testimony or information, that the designating party in good faith believes to contain material that
 10 is “Confidential” under Section 2 above. A receiving party may use confidential material that is
 11 disclosed or produced by another party or by a non-party in connection with this case only for
 12 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
 13 disclosed only to the categories of persons and under the conditions described in this Stipulated
 14 Protective Order. Confidential material must be stored and maintained by a receiving party at a
 15 location and in a secure manner that ensures that access is limited to the persons authorized under
 16 this agreement.

17 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 18 by the court or permitted in writing by the designating party, a receiving party may disclose any
 19 confidential material only to:

20 (a) the receiving party’s counsel of record in this action, as well as employees
 21 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

22 (b) the officers, directors, and employees (including in-house counsel) of the
 23 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
 24

1 agree that a particular document or material produced is for Attorney's Eyes Only and is so
2 designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary for this
4 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

5 (d) the court, court personnel, and court reporters and their staff;

6 (e) copy or imaging services retained by counsel to assist in the duplication of
7 confidential material, provided that counsel for the party retaining the copy or imaging service
8 instructs the service not to disclose any confidential material to third parties and to immediately
9 return all originals and copies of any confidential material;

10 (f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
12 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
13 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
14 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
15 under this agreement;

16 (g) the author or recipient of a document containing the Confidential
17 information or a custodian or other person who otherwise possessed or knew the information.

18 4.3 Filing Confidential Material. Before filing confidential material or discussing or
19 referencing such material in court filings, the filing party shall confer with the designating party,
20 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
21 remove the confidential designation, whether the document can be redacted, or whether a motion
22 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
23 designating party must identify the basis for sealing the specific confidential information at issue,
24 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
25

the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or

ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon timely correction of a

1 designation, the receiving party must make reasonable efforts to ensure that the material is treated
2 in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
11 regarding confidential designations without court involvement. Any motion regarding confidential
12 designations or for a protective order must include a certification, in the motion or in a declaration
13 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
14 affected parties in an effort to resolve the dispute without court action. The certification must list
15 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
16 to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
18 intervention, the designating party may file and serve a motion to retain confidentiality under Local
19 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
20 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
21 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
22 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
23 the material in question as confidential until the court rules on the challenge.
24

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
5 must:

6 (a) promptly notify the designating party in writing and include a copy of the
7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena or order is
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by
12 the designating party whose confidential material may be affected.

13
14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
16 material to any person or in any circumstance not authorized under this agreement, the receiving
17 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
18 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
19 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
20 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
21 Bound” that is attached hereto as Exhibit A.

22 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
23 MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

11. OTHER PROVISIONS

(a) Nothing in this Protective Order shall be construed to permit or to preclude any Party from asserting in good faith that certain Confidential material requires additional protections. The parties shall meet and confer to attempt to agree upon the terms of such additional protections.

(b) Nothing in this Protective Order shall prevent a Party from knowingly waiving the applicability of the Protective Order to any Confidential material so designated by that Party. If

1 the designating party uses Confidential material in a non-Confidential manner, then the designating
2 party shall advise all parties that the designation no longer applies.

3 (c) Nothing in this Protective Order shall affect the admissibility into evidence of
4 Confidential material, or abridge the rights of any person to seek judicial review or to pursue other
5 appropriate judicial action with respect to any ruling made by the Court concerning the issue of
6 the status of Confidential material.

7 (d) Nothing in this Protective Order shall alter, waive, modify, or abridge any right
8 privilege or protection otherwise available to any Party with respect to the discovery of matters,
9 including, but not limited to, any party's right to assert the attorney-client privilege, the attorney
10 work product doctrine, or Fifth Amendment privilege against self-incrimination, or other
11 privileges, or any Party's right to contest such assertions.

12 (e) Entering into, agreeing to, and/or complying with the terms of this Protective Order
13 shall not:
14

15 (i) operate as an admission by any receiving party that any particular materials,
16 such as a document, testimony, or other information designated as Confidential
17 contains or reflects trade secrets, proprietary, confidential, sensitive business
18 information, commercial, financial or personal financial information;

19 (ii) prejudice, in any way, the right of any party (or any person subject to the
20 terms of this Protective Order): (1) to seek a determination by the Court as to
21 whether any particular Confidential material is entitled to protection as Confidential
22 under the terms of this Protective Order; or (2) to seek relief from the Court, upon
23 appropriate notice to all other parties, from any provision(s) of this Protective
24 Order.
25

1 (f) Any party to this proceeding (or other person subject to the terms of this Protective
2 Order) may ask the Court, after appropriate notice to the other Parties to these Proceedings, to
3 modify or grant relief from any provision of this Protective Order.

4 (g) If any provision (or part of a provision, as applicable) of this Protective Order
5 is determined to be invalid or unenforceable or as entered by the Court, strikes, deletes, or
6 otherwise omits any provision (or portion of a provision, as applicable) that was contained in
7 the Parties' [Proposed] Stipulated Protective Order, the invalidity or unenforceability of such
8 provision (or portion of a provision, as applicable) will not affect the other provisions of this
9 Protective Order, and all provisions not affected by such invalidity or unenforceability will
10 remain in full force and effect.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 K&L GATES LLP

13
14 By: s/ Michael D. McKay
15 Michael D. McKay, WSBA #7040
Daniel-Charles V. Wolf, WSBA #48211

16 *Attorneys for Josh Klein and Covalence Capital*
17 *Fund I, LP*

18 CALFO EAKES LLP

19 By: s/ Angelo J. Calfo
20 Angelo J. Calfo, WSBA #27079
Kristin W. Silverman, WSBA #49421

21 ROGERS JOSEPH O'DONNELL

22 Robert C. Goodman, WSBA #49144
23 Dean D. Paik, Applied Pro Hac Vice
Jon-Erik William Magnus, WSBA #54691

24 *Attorneys for Douglas Jae Woo Kim*

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CALFO EAKES LLP
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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 15th day of April, 2021



THE HONORABLE BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

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LAW OFFICES
CALFO EAKES LLP
1301 SECOND AVENUE, SUITE 2800
SEATTLE, WASHINGTON 98101-3808
TEL (206) 407-2200 FAX (206) 407-2224

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *Klein, et al. v. Kim*, CASE NO. 2:20-cv-01628-BJR. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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1301 SECOND AVENUE, SUITE 2800
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TEL (206) 407-2200 FAX (206) 407-2224